Volume III: Issue 1

# The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

**Clause Discussed:**
- Article I, Section 8, Clause 1

**Concept Discussed:**
- To lay and collect Taxes

## Of Slaves and Property

Of the nearly 700,000 slaves enumerated in the 1790 census, well over 90 % were located in the five Southern States of Maryland, Virginia, North Carolina, South Carolina, and Georgia.[1] This disproportionate distribution of slaves divided the United States into two easily-distinguishable factions — slave or free.

The slave-States laid South of the survey line completed in 1767 by English astronomer Charles Mason and surveyor Jeremiah Dixon that settled the boundary between the colonies of Pennsylvania and Maryland. The States later considered "free" were North of this Mason-Dixon Line.

Strictly speaking, at the time of the Constitutional Convention, the division over slavery was not one of slave-owning in the South versus abolition in the North. New York and New Jersey each had significant numbers of slaves (combined they had a few thousand more than Georgia). By the time of the 1790 census, only Massachusetts had actually enacted laws abolishing slavery and had no slaves.[2] Even in Pennsylvania (home of William Penn's Quaker *Friends* who were opposed to slavery), 3,737 slaves were enumerated in 1790.

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1. See the census numbers detailed in *Beacon* II:10:4.

2. Vermont's 1777 Constitution, acknowledging that "all men are born equally free and independent" and that no person "ought to be holden by law...as a servant, slave or apprentice...unless they are bound by their own consent...or bound by law, for the payment of debts..."[3] mostly forbade involuntary servitude and slavery, but Vermont was not admitted into the Union until 1791. Even then, 17 slaves were enumerated in Vermont under direction of the first census.

3. U. S. Serial Set, 59th Congress, 2nd Session, House Document #357, "*The Federal and State Constitutions*", Microfiche # 5192. Pp. 3739-40.

The Southern States, of course, were unwilling to give up slavery in 1787. But the North would not then formally propose this step which would necessarily fail politically, that hadn't even been completed successfully in the North.

The debate at the convention over slavery did not therefore concern abolition, it centered on the treatment of slaves regarding two issues — the procedures for determining the number of Representatives and the manner in which slaves could be taxed.

The first issue concerning slavery stemmed from slave's role as *persons*. As people, the question was whether (or to the degree that) their numbers would count towards the apportionment of Representatives. This issue was settled by compromise at the convention — *slaves* would be counted in a 3/5 ths proportion to *free persons*.

The second issue regarding slaves stemmed from their role as *property* — deciding how and when revenue could be raised from them — when property was taxable. The short answer was *whenever Taxes were apportioned*. With nearly 700,000 total slaves within the United States, significant amounts of revenue could be raised on this particular type of property (even replacing other sources), so the matter was of considerable consequence. When taxed as *persons* (capitation and poll Taxes), Article I, Section 9, Clause 4 required that slaves be taxed in this same 3/5 ths proportion to free persons.

For example, had such a power had been allowed, a Duty of less than $3 on each slave could have easily replaced the entire 1798 apportioned Tax of $2 million that ended up being laid on dwelling-houses, land and slaves (slaves at $.50 each).

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This hypothetical $3-per-slave Duty, equivalent to approximately 1.5 % of the average slave's value,[4] was at a low enough rate to even be laid annually. Five Southern States would have paid 90 % of all such Duties, with eight Northern States accountable for little of it. A perpetual $3-per-slave-per-year Duty would certainly benefit the North at the South's expense.

The Southern delegates at the constitutional convention were keenly aware of such exposure of uniform Duties on slaves. The South, recognizing (but not admitting) the immorality of some persons owning other persons, knew that slavery would be prone to such legislation unless they forestalled such an event.[6]

Even if the South did not recognize such immorality, that one type of property was so disproportionately located would alarm the owners of such property of the potential harm if uniform Duties or Excises were allowed.

That one type of property was so disproportionately located in the Union would raise alarm of the potential harm if uniform Duties or Excises were laid on this property.

During the convention era, the Southern States were the economic powerhouse of the Union. It would not be until many decades later that the Northern States, with their growing merchant, banking, and industrialization practices, would pull into the forefront of economic vitality. It should be of no surprise, therefore, that the South had significant political clout and was able to bargain hard during the convention process.[7]

The only allowance conceded by the South involved the importation of new slaves into the Union — Duties or Taxes on the importation of slaves to $10 per slave were allowed for a period of 20 years (after which Congress were free to regulate such importation).[8]

It is was a political truth in 1787 that the eight Northern States could not use the Constitution to defeat slavery (if that had been their united goal) due to their need of the voluntary consent of the Southern States for establishment of the Constitution (which required *nine* States [established only within the States so ratifying]).

The South had sufficient political might to withhold from Congress power which protected their slave-holding interests, conceding only the power to restrict the slave trade.

Delegates from the Southern States believed that they had properly protected slavery (by the requirement of apportionment of Taxes) within the Constitution. So too did the delegates of the State ratification conventions. During the Virginia ratification convention, delegate George Nicholas stated:

> "The taxes could not…be laid so high on negroes as to amount to emancipation; because taxation and representation were fixed according to the census established by the Constitution…Had taxes been uniform, it would have been universally object to; for no one object could be selected without involving great inconveniences and oppressions." [9]

James Madison further responded (emphasis added):

> "That even the Southern States…were perfectly satisfied with this provision, and dreaded no danger to the property they now hold…The census in the Constitution was intended to introduce equality in the burdens to be laid on the community. No gentleman objected to laying duties, imposts, and excises, uniformly. But uniformity of taxes would be subversive of the principles of equality; for it was not possible to select **any article** which would be easy for one state but what would be heavy for another; that, the proportion of each state being ascertained, it would be raised by the general government in the most convenient manner for the people, *and not by the selection of any one particular object*." [10]

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4. Slaves averaged in value about £44[5] (nearly $200 in 1790 exchange rates) in 1775.

5. 93rd Congress, 1st Session, House Document 93-78, *Historical Statistics of the United States, Colonial Times to 1970*, British-American Slave Prices, Chart Series Z 166, pg. 1174.

6. As history would shortly prove, government willingly imposed morality-based revenue laws to discourage that which was deemed immoral activity. Alexander Hamilton's 1790 Treasury Report (see *Beacon* II:8:2) stated that it was "sound policy" to encourage the health, morals, and economy of the community by laying Duties on items detrimental to such (distilled spirits, etc.).

7. The North, of course, also benefited from the protection of all property by apportionment.

8. As acknowledged by Colonel George Mason of Virginia at the Constitutional Convention on August 22, 1787, Maryland and Virginia had "already prohibited the importation of slaves expressly. North Carolina had done the same in substance" (by the imposition of an Impost Duty). That two Southern States (South Carolina and Georgia) yet continued the commerce of slave importation was the reason the Constitution was able to impose import restrictions upon the slave trade (it was slowly becoming unnecessary; it was therefore unlikely, by itself, to prevent ratification of the Constitution within any State).

Oliver Elseworth next admitted the reason for the difference: "As slaves multiply so fast in Virginia and Maryland…it is cheaper to raise than import them, whilst in the sickly rice swamps (in South Carolina and Georgia) foreign supplies are necessary" (due to high sickness and death rates from malaria and similar diseases).

9. Elliot's Debates, Volume III, pg. 457.

10. Ibid, pg. 458.

"Uniformity of taxes would be subversive of the principles of equality."

James Madison

Though overt slavery has rightfully been abolished in the United States since 1865 by the ratification of the 13th Amendment, the manner in which the Constitution dealt with slaves is yet pertinent today (to modern-day property owners), for how the Constitution treated the property of slaves reflects how it treats all property. The study of how slaves were taxed provides the property owner today with powerful understanding of the revenue-raising clauses of the Constitution.

Though slavery has long been abolished in the United States, this matter is yet pertinent today, for how the Constitution treated the property of slaves reflects how it treats all property.

It should be noticed that nowhere in the Constitution are *slaves* or *slavery* mentioned directly.[11]

There is no express mention in the Constitution of a requirement to apportion Taxes on slaves (as property). Neither is there an express provision in the Constitution prohibiting slaves from being used as a source of revenue for laying a uniform domestic Duty or Excise. These omissions better support the concept that *all* property is protected from being used as a source of revenue for federal Duties and Excises laid uniformly.

A careful reading of the Constitution will leave a person to draw only one of two opposing conclusions: either all property must be apportioned when revenue is sought from it (and property cannot be subject to a uniform Duty or Excise) or that no property was actually ever protected in such a manner.[12]

An example under the latter alternative would mean that slaves were not really protected from being laid with a Duty. This would mean that Congressmen simply kept their hands off slaves for a period of seventy years, resorting even to war rather than to subtly abolish slavery by excessive Duties over a period of decades.

There is little question even today that the Framers of the Constitution universally viewed that slaves were protected from being used as a source of revenue for domestic Duties and Excises.

That there has never been a Duty or Excise laid on slaves (other than Impost Duties upon their importation) well attests to the fact that slaves were off-limits to such uniform revenues. In the first two eras which direct Taxes were laid (1798 and War of 1812), slaves were included as one of the three sources (land and dwelling-houses additionally) of revenue used for the laying of a direct Tax. These two facts further support the Framer's viewpoint that slaves were appropriate sources of revenue only with regards to apportionment.

## Slaves are the one type of property yet persons

The Constitution dealt with slaves in a bifurcated manner; they were treated in a 3/5ths manner as *people*, leaving them in a 2/5ths manner as *property*.

It is understandable that slaves could be treated as persons, in that they were first people. Slaves are, of course, the only type of property which are also people. This unique attribute could certainly play an important role in holding this type of property different from other types. It is certainly plausible that slaves as property could be treated differently from other types of property because of their alternate role as *people*.

This important difference between slaves and other types of property must be looked into first to see if this could be the reason that slaves were protected by apportionment (and perhaps that other property would not be so protected).

The requirements for apportionment are spelled out in Article I.

**Article I, Section 9, Clause 4** states:

> "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

11. **Art. I:2:3** refers to "other persons" meaning slaves, dealing with the requirement to count all slaves in a 3/5ths manner for apportionment of Representatives and for direct Taxes. The mechanism discussed here determines the number of Representatives and the amount of Tax apportioned to the States. *Nowhere in the Constitution is there mentioned a process for determining the property actually levied with a Tax* (land, dwelling-houses, slaves etc., must be named within the legislative Acts imposing the Tax).

**Art. I:9:1** refers to "persons" subject to importation, again meaning slaves. Slaves were allowed to be laid with a Tax or Impost Duty to $10 upon their importation into the United States from foreign ports.

**Art. IV:2:3** refers to persons "held to Service or Labour" meaning indentured servants and slaves. Prior to ratification of the 13th Amendment, such persons escaping from bondage were to be returned to their masters.

12. It might be successfully argued that *real property*, by historical usage, would nevertheless always require apportionment, even though not specifically mentioned.

**Article I, Section 2, Clause 3**:

> "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."

Section 2 clearly provides the formula for apportionment — to the numbers of *free persons* (including indentured servants, but excluding Indians) would be added the numbers of *other persons* (at a 3/5 ths ratio) who were not free.

The apportionment process is the method used for determining the total amount of Tax for which each State is responsible; *it has nothing to do with designating the property actually assessed*. Neither does the apportionment process have anything to do with determining the *rate* of Tax on items so levied (which is a function of the amount of Tax divided by the number or value of the items taxed).

## Capitation Taxes

When *people* are taxed under Article I, Section 9, Clause 4, the apportionment process determines *both* the distribution of the Taxes to the States *and* determining the persons taxed. Capitation Taxes are the only type of direct taxation explicitly named by the Constitution — they are obviously therefore (expressly) allowed. Slaves, as people, would necessarily be subject to such Taxes.

If capitation Taxes were laid, then all persons would be taxable to the extent they were apportioned. All free persons, including indentured servants, would be taxed at a set rate. Slaves, as 3/5 ths of a taxable person, would then be taxed in this proportional 60 % ratio. Indians would be excluded from the Tax.

If the more-restrictive poll Taxes were laid, then all persons made liable within the Act imposing such Taxes would be subject to the Tax. If all males between 21 and 65 years of age were taxed, then all free males between 21 and 65 years of age would be taxed at a set rate and all male slaves between 21 and 65 would be taxed at the 3/5 ths rate. Indians would still be exempted from the Tax.

Slaves cannot be taxed *as persons* if free persons are not also taxed, as Article I, Section 9, Clause 4 requires that the capitation Tax be "in Proportion to the Census or Enumeration herein before directed to be taken".

The United States assembled in Congress under the Constitution have never laid a capitation or poll Tax, however. Slaves have never then been taxed in their capacity as *people*. Slaves have been taxed only as *property* (in the two eras when slaves were taxed).

Neither have slaves ever been laid with a uniform (domestic) Duty or Excise apart from their importation into the United States from a foreign port. Since slaves have been taxed in their role as *property* but not in their role as *persons*, one cannot thus look to the slave's unique role as persons as the reason that they were taxed in an apportioned manner. Thus, slaves are not held differently from other property (because they are also people).

It is important to realize that nowhere in the Constitution is there any direction as to which property or goods may a direct Tax be laid upon. More importantly, neither is there any listing of items or property which cannot be laid with a uniform Duty or Excise.

It is important to realize that nowhere in the Constitution is there any express direction as to which property or goods may a direct Tax be laid upon.

## Taxable Property

Making two opposing categories (*apportioned* Taxes and *uniform* Duties, Imposts and Excises) with separate requirements (*apportionment* and *uniformity*) would seem to make no sense without listing which items fall into which category unless it was universally understood.

It would seem natural that if apportionment was seen as a means to protect persons in their property, that this protective mechanism would explicitly spell out which property required apportionment *if not all property was included in the requirement*.

Unfortunately for 21 st century Americans, the Constitution does not explicitly detail the property required to be apportioned.

Even more troubling is understanding that although Congress is given the power to lay and collect "Taxes, Duties, Imposts and Excises", the requirements given for each of the two divisions seem to allow for a third.

Granting Congress the power to "lay and collect Taxes" while mandating apportionment of "direct Taxes" seems to infer and even acknowledge that there would be such a type of tax which is not direct. If so, this "indirect tax" would not seem to have any specific requirements for its imposition.

If there are some types of taxes which do not need to be held to the standard of apportionment, *then some taxes are without a protective mechanism*. That these other taxes would automatically default to being uniform does not follow the logic of the Constitution (nor even if they did, would this equate to any real protection).

The most logical and plausible answer of this potential dilemma, of course, is acknowledging that the term *taxes* is often used as an imprecise and generic term for *any* type of government revenue.

Under this concept, Duties, Imposts and Excises would be those types of indirect taxes which are necessarily uniform. The imprecise wording allowed by the Constitution may well be simply an acknowledgment that Duties, Imposts and Excises are often imprecisely referred to as *taxes* in general usage.

The allowance for imprecision would then simply leave only the two categories of revenues — *Taxes* precisely-defined, which must be *apportioned* and indirect *taxes* loosely-defined (Duties, Imposts and Excises), which must be *uniform*.

A *Tax* would be that form of revenue sought on property already owned; *apportionment* would protect owners of that property from excessive taxation.

The requirement for *uniformity* would prevent the imposition in one State of rates different from any other. Uniform Imposts, Duties and Excises offer protection because they self-limiting; as the rates are increased, increasing numbers of people stop buying those items affected with excessive fees (Duties, Imposts and Excises are laid upon items before they reach the consumer).

Property requiring apportionment has protection, because the federal government could not easily target certain items with high Taxes for political purposes, as proportional amounts of Tax must be raised in each State. Apportionment removes politics from the raising of revenue to simply provide for the needs of government.

If the Constitution allowed for a type of property not covered by apportionment requirements, this property would not be afforded with any protective mechanism. By definition, apportionment would not apply. With the property already owned, the thought that people could withhold purchase and therefore payment of the Duty (indirect tax) would be but a farce.

Thus, this non-apportioned property already owned stood to be (in)directly confiscated by the requirement of payment of extraordinary taxation rates (100%?, 1,000%?) laid within the discretion of Congress. The only alternatives to payment of this non-apportioned tax would be to sell this property at hugely-discounted prices (depending upon the tax rates) or even discarded (but even these options may not remove the owner from liability). The lack of any inherent protective mechanism would allow Congress a discretionary power not otherwise or elsewhere granted them.

The larger the geographical area and the more diverse the people and situations, the greater people stood exposed to such ill-granted discretion — the less secure the property.

There is no express protection for slavery listed in the Constitution which prevented slaves from being laid with a uniform Duty or Excise. Neither is there an express requirement that revenue sought from slaves must be apportioned. There is thus no way slaves could be singly-protected from being used as a source for uniform Duties or Excises.

If slaves could have been levied with a uniform Duty or Excise, certainly this would have been done as the framers of the Constitution died off and were no longer around to defend their original intentions. The likelihood for abolition of slavery certainly increased over time as the North grew more prosperous and as more Northern States abolished slavery.

That uniform Duties or Excises on slaves were not laid to make slavery no longer economically-viable as an incremental step to avert civil war only makes sense if Congress was powerless to lay uniform Duties on slaves.

Though one could argue that *real property*, by historical usage and common understanding, always required apportionment, one would have a far greater difficulty arguing the same for *slaves*. Without special protection, *slaves would necessarily be treated as any other property*. That slaves never were laid with a domestic Duty or Excise provides convincing (if not irrefutable) evidence that the Constitution protects all property already owned from the rule of uniformity.

Congress certainly had the power to Tax slaves. The direct Tax Acts in 1798 and 1813-1815 assessed Taxes on slaves. Although slaves were taxed with real property, the taxing of slaves did not alter the total amount of Tax due by a State. States without slaves paid their proportional amount of Taxes, *simply on other property*.

As far as the federal government was concerned, the manner in which the necessary amounts of Taxes were raised was inconsequential — what mattered was that necessary revenue was raised in a satisfactory manner within an appropriate amount of time with relative ease.

Taxes on property were not allowed to be a political issue to direct the affairs of men. People were protected in their property and government was assured the means to raise necessary revenue in addition to Imposts, domestic Duties and Excises.

## Apportionment of Taxes on Property

Since the Constitution lists no specific taxable property, it left open the type of property which could be taxed. All property, except as noted in the Constitution (exported goods, imported slaves at a rate more than $10, etc.), was left capable of being taxed.

Congress has the discretion to decide which types of property to assess with a Tax, but the amount to be raised will not vary State to State because of the type of property chosen. The amount varies State-to-State only due to the State's proportional population.

Congress would be powerless to lay a Tax only on one item which was not universally located. For example, Massachusetts had no slaves when the first direct Tax was laid. Obviously, Congress could not lay a Tax only on slaves because no money would be raised in Massachusetts — the Constitution requires that a proportional amount be raised there also.

It would be politically-improbable that Congress could lay a Tax on that property which varied widely State-to-State. Obviously, if one State had no assessable property, then the Tax could not be laid and it would necessarily have to be modified. Not so obvious would be the instance when a State had only a minor amount of assessable property.

A hypothetical example may prove beneficial. In this example, let's say that the 1798 direct Tax was laid solely on slaves, and that 1,000 slaves had been enumerated in Massachusetts.

The $260,435.312 apportioned to Massachusetts would require a rate of $260.435312 per slave. In Virginia, with 293,427 slaves and a Tax requirement of $345,488.665, only fractionally over $1.177 per slave would be required. That slaves could be assessed at such widely-diverging rates due to a geographical boundary would be preposterous.

The purpose of laying Taxes, Duties, Imposts and Excises is for providing adequate revenue for government to provide for its authorized purposes. Though 21st-century Citizens may have some difficulty imagining a government which did not act in a manner always political in its purposes, 19th-century Americans were were less prone to such difficulty. The primary proper purpose of laying Taxes, Duties, Imposts and Excises does not include to direct and control human behavior.

That one State had low relative Tax rates on an object but another State had rates 200 times that cannot be said to be apolitical. Such a widely-diverging rate would necessarily cause modification of the proposed law to more-effectually accomplish its primary purpose without such devastating results.

If the law was not changed, the widely-varying rates would polarize the Union, inviting chaos and distrust. Obviously, slaves would be sold out of Massachusetts, leaving none to Tax. The effect of such a law would not be to free all slaves, *but only to concentrate them within other States*. Once a single State had none, slaves could not, by definition, be a single source of revenue again in the future. All but the most ardent, war-mongering abolitionist would likely have difficulty with laws which would directly inflame and destabilize the Union, which would not even result in the political effect sought (emancipation).

If assessed property was found disproportionately throughout the States, then Congress would, by necessity, modify the proposed Tax to include additional types of property. Congress is prevented, by the constitutional requirement of apportionment, from laying a Tax on types of property which are not capable of raising the required amount of Tax in each State.

Of course, the more types of property which are levied, the broader must be the information-gathering process to properly assess the *number* and perhaps the *value* of property so assessed. At some point, practicality will necessarily-limit the assessment to a few items universally-located which are capable of raising the necessary amount of Tax levied (a larger Tax would likely increase the number of items assessed) with a minimum of resistance.

Congress could easily pick a handful of readily-assessable types of property which are located to varying degrees throughout the States to levy with a direct Tax.

Types of property chosen should naturally be items of higher value, so only small proportions of that property's total value would be affected.

Where assessed property was found in one State, it would be taxed to raise the apportioned amount. Where it was not found, no Taxes would here obviously be raised, but the remaining properties assessed would necessarily carry the balance of the assessment.

In the 1796 Hylton "case" (discussed in *Beacon* II:10), the supreme Court justices ridiculed as unworkable the idea that Congress could levy one form of property in one State, and another form of property in another State. While this could prove impractical if the types of property chosen to be assessed were unwise, it does not necessarily mean that it is inherently unworkable. That the justices attempted to use this impracticality argument to "prove" that property could be laid with a uniform Duty (because Congress has the ability to raise revenue on all property) borders on lunacy.

That differing types of property be taxed State-to-State is exactly what would later happen under the 1798 direct Tax. In 1798, slaves were assessed with a Tax of $.50 each, *but slaves were not located in every State* — Massachusetts had none. In New Hampshire and Rhode Island, less than 1,000 slaves were present in each. There were less than 4,000 each in Connecticut and Pennsylvania. In others, however, there were tens and even hundreds of thousands of slaves.

It did not make any difference that some States had slaves and some had few or none. In States where slaves were found, the amount raised from slaves (and dwelling-houses) was deducted from the amount owed; the balance owing was then collected on land. In States with few or no slaves, the apportioned amount of Tax was simply all paid on land (and dwelling-houses).

That slaves could be Taxed proved that *varied property can be assessed without difficulty*; Congress can (and did) pick and choose property which was located in differing proportions in differing areas. Congress simply cannot chose only *one* property to assess which is widely-divergent.

The overall amount due on any direct Tax was not increased or decreased by the presence or absence of slaves. *The presence or absence of slaves only varied the distribution of the Taxes laid.* Any other type of property could be substituted for slaves in any apportioned Tax.

The presence or absence of slaves only varied the *distribution*, not the *amount*, of the Taxes laid.

If property only needed to be held to the standard of *uniformity*, then it could be readily used as a source of revenue (at the will of Congress) apart from all other concerns (principles of justice aside). "Taxation" could be used to target specific types of property for political purposes. Politics would gain a foothold into the affairs of men and economic situations of States and even entire regions of States not elsewhere granted.

## Initial Era of Raising Revenue

The first 13 years of government under the Constitution saw the gamut of revenue-raising Acts. The first major Acts of Congress were to enact Customs Duties and Duties on the tonnage of ships. These Imposts were the primary and expected sources of revenue for the United States. As such, no one questioned the propriety of laying them.

Within two years of government operation under the Constitution, domestic Duties were laid on alcoholic spirits distilled within the United States. Though perhaps not unexpected, many people thought that this was unnecessary, and quite a few, improper.

Three years later, in 1794, four Acts were enacted which laid Duties on domestic items. In 1797, stamp Duties (the prototypical domestic Duty) were also enacted. Finally, in 1798, a single-instance direct Tax was laid. In 1802, all domestic Duties were abolished.

Out of all these forms of revenue laid during this time, the only law seriously challenged by men of high moral and legal standing was the 1794 Act laying "Duties" on carriages for the conveyance of persons. Men of impeccable stature (no less than James Madison, for instance) were resolute in their belief that this was an unconstitutional laying of a Tax without the required apportionment.

The pertinent question arises, are *carriages* of such a different type of property from *slaves* as to require opposing standards? While it may be difficult in the 21st century to think that there could be property in men, history cannot be changed by wishful thinking otherwise.

That such a dreadful type of property could provide modern-day property owners with clarity of thought to better-learn how to protect their own property could be one small way to turn a dark history into a better future for all Americans.

## Property

Men work to provide goods or services to other men who are willing to pay them out of their excess. In other words, men trade their time, a portion of their lives, for property.

Property is then simply an extension of man's life into the material world. If any man were an island unto himself, self-sufficient in all his needs, wants and desires, then perhaps this autonomous man would not need property. However, for the rest of us mere mortals, property is a necessity of life, giving us food, shelter, clothing, etc. He or they who take of that property without right takes away from the very life of the person whose property is stolen.

While it may be easy to distinguish between *real* property and *personal* property, distinguishing between various forms of *personal* property merely differs in what happens to be useful under a given set of circumstances.

*Slaves* had obvious purpose, as did *carriages*. Would one naturally be subject to apportionment and the other only to uniformity? The foregoing analyses answer *no*.

The Federalist majority in Congress in the mid-1790's pursued enactments of law which were not well-tolerated by many people. "Duties" on carriages, the Alien and Sedition Acts, and similar Acts helped quicken the demise of the Federalist party. The Federalists' audacity helped transfer the very authority they sought over to the Democratic-Republicans.

Jefferson succeeded quite effectively at restoring limited government when he assumed office. Within a short period of time, government was trimmed to the bone. Given Jefferson's distaste for a standing Army, there was little need for excessive Duties or Taxes.[14]

Laws were repealed, domestic Duties eliminated and numerous government offices and positions terminated. Government was quickly pared back to within the strict confines of constitutional government.

## War of 1812

History would soon test the Democratic-Republican's resolve for extremely-limited government, however. During the Napoleonic Wars (1796-1815) France and Britain imposed reciprocal blockades against one another.

American merchant ships, seeking to corner the neutral shipping market which developed, became increasingly affected after the increased intensity of conflict following 1803.

Though both Great Britain and the United States honored one another's territorial waters, on the high seas Britain claimed the right to search American merchant ships to restore British deserters to their "rightful" service (*impressment*).[19] The short-handed Royal Navy boarded American ships looking for fugitive "British" sailors. When found, they would be pressed back into service — as one can expect, not only the guilty were taken.

On other fronts, the English had never honored the boundaries of the Great Lakes region as required under the 1783 Treaty of Paris. The English and the Indians aided one-another to keep back the push of Americans on the Western frontier.

Jefferson, pursuing political negotiation, sought to coerce the English through economic embargoes and non-importation Acts. England unfortunately felt little economic pressure, as her South American trade then flourished, nullifying any potential positive effects from the economic blockade. The embargo did cause significant economic devastation; unfortunately, it was in the New England shipping communities.

Madison inherited Jefferson's unenviable position when the honor of the United States as an independent sovereignty was challenged by a country which had a large multiple of America's military might.

Following the election of a number of "War Hawks" (among them John C. Calhoun of South Carolina and Henry Clay from Kentucky) to Congress, *War* was declared on the "United Kingdom of Great Britain and Ireland and the dependencies thereof" on June 18, 1812.[20]

Unfortunately for Jefferson and for America, Jefferson's attempts at economic leverage failed: America soon found herself at war — ill-prepared militarily, nearly broke, and with little revenue.

The War of 1812, like all wars, necessitated large amounts of government revenue. As war always proves, economic strength can play almost as great of role in success as military strategy, might and even resolve. It was imperative that the United States' government raise large volumes of needed money, promptly.

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14. The Army consisted of approximately 6,000 regulars[15] (±1,000) in 1808; the Navy (in 1811) had 15 ships of war in service (five more out of service), with 5,025 seamen.[16] 167 small gunboats were also listed.[17]

In contrast, in 1801, England had a principal combat force of 760 ships and frigates (and another 185 vessels at their disposal), 100,000 seamen (in 1790) and an equally-impressive army.[18]

15. American State Papers, Military Affairs Section, Vol. I, 12th Congress, 1st Session, Senate Document #112 "*Military Force in June, 1812*", pg. 319 @ 320. 100,000 militiamen were readied by the Act of April 10, 1812 (II Stat. 705).

16. American State Papers, Naval Affairs, Vol. I, 12th Congress, 1st Session, Senate Document # 91 "*Number of Vessels in Service...*", pg 264 @ 265.

17. American State Papers, Naval Affairs, Vol. I, 11th Congress, 2nd Session, Senate Document # 80 "*Use of the Torpedo in the Defence of Ports and Harbors.*", pg 211 @ 227.

18. Ibid, pg. 223, 224.

19. The concept that one could change nationalities was little accepted at the beginning of the 19th century.

20. II Stat. 755.



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